

CORRECTED

# In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 19-1780V

UNPUBLISHED

LISA B. VENDIOLA,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: February 8, 2021

Special Processing Unit (SPU);  
Damages Decision Based on Proffer;  
Influenza (Flu) Vaccine; Complex  
Regional Pain Syndrome

*Dennis W. Potts, Honolulu, HI, for Petitioner.*

*Mollie Danielle Gorney, U.S. Department of Justice, Washington, DC, for Respondent.*

## **DECISION AWARDING DAMAGES<sup>1</sup>**

On November 19, 2019, Lisa B. Vendiola filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*<sup>2</sup> (the “Vaccine Act”). Petitioner alleges that she suffered from a right upper extremity brachial plexopathy that was caused by receipt of an influenza (“flu”) vaccine on April 7, 2017. Petition at 1. Petitioner further alleges that she suffered her vaccine-related injury for more than six months. Amended Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On November 5, 2020, a ruling on entitlement was issued, finding Petitioner entitled to compensation. Respondent’s Rule 4(c) Report at 1. Specifically, Respondent states that while “Petitioner does not meet the Table criteria for a SIRVA because her injury was not limited to the shoulder in which the intramuscular vaccine was administered, but radiated distally down to her hand, the facts of the case do support a

<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims’ website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

finding that petitioner more likely than not suffered CRPS [complex regional pain syndrome], that was caused-in-fact by the administration of the flu vaccination on April 7, 2017.” *Id.* at 4-5

On February 8, 2021, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded a total of \$125,000.00, consisting of \$99,785.39 in pain and suffering, and \$25,214.61 for lost earnings she incurred related to her vaccine-related injury. Proffer at 2. In the Proffer, Respondent represented that Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$125,000.00, (consisting of \$99,785.39 in pain and suffering and \$25,214.61 for lost earnings she incurred related to her vaccine-related injury) in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under § 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.<sup>3</sup>

**IT IS SO ORDERED.**

**s/Brian H. Corcoran**  
Brian H. Corcoran  
Chief Special Master

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<sup>3</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties’ joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
OFFICE OF SPECIAL MASTERS**

LISA B. VENDIOLA,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 19-1780V
	)	Chief Special Master Corcoran
	)	ECF
SECRETARY OF HEALTH AND HUMAN	)	
SERVICES,	)	
	)	
Respondent.	)	
	)	

**RESPONDENT’S PROFFER ON AWARD OF COMPENSATION**

On November 19, 2019, Lisa B. Vendiola (“petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34 (“Vaccine Act” or “Act”), alleging that she suffered from upper brachial plexopathy following administration of an influenza (“flu”) vaccine she received on April 7, 2017.<sup>1</sup> Petition at 1, 4-5. On October 30, 2020, the Secretary of Health and Human Services (“respondent”) filed a Rule 4(c) Report indicating that this case is appropriate for compensation under the terms of the Act for chronic regional pain syndrome (“CRPS”), and on November 5, 2020, the Chief Special Master issued a Ruling on Entitlement finding petitioner entitled to compensation. ECF No. 29; ECF No. 30.

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<sup>1</sup> Petitioner subsequently amended her petition on July 14, 2020, alleging that she suffered from shoulder injury related to vaccine administration (“SIRVA”) as a result of receiving the April 7, 2017 flu vaccine.

**I. Items of Compensation**

**A. Pain and Suffering**

Respondent proffers that petitioner should be awarded \$99,785.39 in pain and suffering.

*See* 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

**B. Lost Earnings**

Evidence supplied by petitioner documents that she incurred lost earnings related to her vaccine-related injury. Respondent proffers that petitioner should be awarded lost earnings in the amount of \$25,214.61. *See* 42 U.S.C. § 300aa-15(a)(3)(A). Petitioner agrees.

These amounts represent all elements of compensation to which petitioner is entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

**II. Form of the Award**

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment as described below and requests that the Chief Special Master's decision and the Court's judgment award the following<sup>2</sup>: a lump sum payment of \$125,000.00, in the form of a check payable to petitioner.

**III. Summary of Recommended Payments Following Judgment**

Lump sum payable to petitioner, Lisa B. Vendiola:	<b>\$125,000.00</b>
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Respectfully submitted,

BRIAN M. BOYNTON  
Acting Assistant Attorney General

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<sup>2</sup> Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future lost earnings and future pain and suffering.

C. SALVATORE D’ALESSIO  
Acting Director  
Torts Branch, Civil Division

HEATHER L. PEARLMAN  
Acting Deputy Director  
Torts Branch, Civil Division

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/s/ Mollie D. Gorney  
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DATED: February 8, 2021